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9	BEFORE THE BOARD OF REGISTERED NURSING
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
11	
12	In the Matter of the Accusation Against: Case No. 2012-29
13	JOEY RODRIGUEZ ALMARIO 10924 Cypress Falls Avenue
14	Bakersfield, CA 93312 A C C U S A T I O N
15	Registered Nurse License No. 650530
-16	Respondent.
17	
18	Complainant alleges:
19	<u>PARTIES</u>
20	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21	official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22	Consumer Affairs.
23	2. On or about January 4, 2005, the Board of Registered Nursing issued Registered
24	Nurse License Number 650530 to Joey Rodriguez Almario (Respondent). The Registered Nurse
25	License was in full force and effect at all times relevant to the charges brought herein and will
26	expire on February 28, 2013, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

- 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.
 - 6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct.

7. Section 726 of the Code states:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship."

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

STATEMENT OF FACTS

- 9. During 2009, Respondent was employed an a registered nurse at the North Kern State Prison, assigned to the inmate clinic. At this assignment, Respondent had regular and frequent contact with state prison inmates regarding health checks, optometry appointments and eyeglass fitting, among other health care duties and functions.
- 10. On or about May 12, 2009, a state prison inmate, JB, informed prison staff that he received a personal telephone number from a staff member named Joey Almario (Respondent), and that Respondent had made several inappropriate comments and advances toward him of a sexual nature.
- 11. Inmate JB further informed prison staff that Respondent gave him the telephone number and told JB that he would quit his job as a nurse and move to Las Vegas with JB when he paroled from the prison. Inmate JB described the following contacts with Respondent:
- a. On his first visit to the clinic, around April 2009, Respondent made comments to JB that he was attractive, had a good physique, and that looking good was not hard for him;
- b. On the second visit, about four weeks later, Respondent made other comments of a sexual nature to JB and brushed his hand against JB's crotch area;
- c. On the third visit, Respondent gave JB his home telephone number on a small piece of paper;
- d. On the fourth visit, when JB had a chipped lens on his glasses, Respondent gave JB his cellular phone number, and asked JB if he was interested in seeing him upon being released from prison, and that Respondent would pick him up. Respondent also asked JB if he liked guys; and

- e. Respondent would repeatedly call JB up to the clinic just to ask how his eyes were, at which time the sexual comments continued.
- 12. On or about December 1, 2009, another state prison inmate, RD, related the following inappropriate contacts with Respondent:
- a. During a visit to the clinic for eyeglass frames, Respondent told RD that if he would be willing to "suck this", while pointing at his genitals, that RD would be able to get better eyeglass frames;
- b. Inmate RD declined Respondent's offer and told him he was not gay, and that he just wanted to order the eyeglass frames. Respondent said he would order the frames; and
- c. Because RD declined his advances, Respondent ordered the frames, but wrote down a "H" instead of a "K" on the order form, so the frames were sent to another state prison instead.
- 13. On or about November 18, 2009, during an interview with the Office of Internal Affairs, Respondent made the following admissions with regard to the allegations of sexual misconduct and unprofessional conduct:
- a. Respondent admitted he made inappropriate jokes and sexual comments toward inmates;
- b. Respondent admitted he exchanged phone numbers with JB and made plans to call each other after he was paroled;
 - c. Respondent admitted he hoped to establish a homosexual relationship with JB;
- d. Respondent admitted he asked inmate RD if he was gay and if he wanted to have oral sex; and
- e. Respondent admitted giving out his personal phone number to between 10 and 20 other inmates at the prison.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondent is subject to disciplinary action under section 2761, subdivision (a), on the grounds of unprofessional conduct in that Respondent had inappropriate contacts and made sexual advances toward state prison inmates, as described in paragraphs 9 through 13 above.

SECOND CAUSE FOR DISCIPLINE

(Sexual Misconduct or Relations with Patients)

15. Respondent is subject to disciplinary action under section 726, on the grounds of unprofessional conduct, in that Respondent committed sexual misconduct, had inappropriate contacts and made inappropriate sexual advances toward state prison inmates when they sought out medical/optometry services, as described in paragraphs 9 through 13 above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 650530, issued to Joey Rodriguez Almario;
- 2. Ordering Joey Rodriguez Almario to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: July 14, 201

LOUISE R. BAILEY, M.Ed., RN

Executive Officer

Board of Registered Nursing Department of Consumer Affairs

State of California Complainant

LA2011600589